

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

**UNITED STATES OF AMERICA,**  
Plaintiff,  
v.  
**RAMON DIAZ ORTIZ,**  
Defendant.

CRIMINAL NO. 99-306 (PG)

**UNITED STATES' MOTION IN OPPOSITION TO DEFENDANT'S MOTION TO  
REDUCE SENTENCE**

**TO THIS HONORABLE COURT:**

COMES NOW the United States of America, by and through the undersigned attorneys, and very respectfully states and prays as follows:

1. On August 9, 2005, defendant filed a Motion for Consideration of a Reduction of Sentence (docket # 266).
2. On February 17, 2006, this Honorable Court issued an Order directing the Government to respond to said motion within twenty (20) days (docket # 268).
3. Upon review of defendant's motion it is evident that the defendant is not entitled to any reduction in his sentence, since he seeks a reduction based on the application of U.S.S.G. § 2D1.1(a)(3), which states: that *if* "defendant receives an adjustment under §3B1.2 (Mitigating Role)" then the defendant is entitled to certain further reductions to his base offense level.

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4. The defendant mistakenly believes he is entitled to a mitigating role adjustment, because he received a reduction of three (3) levels for acceptance of responsibility.
5. The defendant is not entitled to a mitigating role reduction since he was found to be a supervisor in the underlying offense, and which underlying offense defendant pled guilty to on February 26, 2001. (See Def. Mot. Para. 1, 2. See also, Appendix with Plea Agreement: paragraph 8.b. Base offense level shall be increased by three (3) levels based on the defendant's role in the offense as a manager or supervisor pursuant to U.S.S.G. §3B1.1(b).
6. Since defendant's role was that of a manager, or leader, and since he received an *upward* adjustment for such leadership role, he cannot receive the benefit of a *reduction* in his sentence based on mitigating role.
8. crewmembers on board, and that they were all responsible for the transportation of the marijuana to Puerto Rico from Colombia. The First Circuit has ruled that in cases such as this one, i.e., "vessels" or "boat cases," a showing that the crewmembers had comparatively different and therefore less culpable roles is required for them to qualify for a reduction in the offense for minor participation. See United States v. Rosario-Peralta, 199 F.2d 552 (1<sup>st</sup> Cir. 1999) (holding that where defendants were "[t]he only three individuals aboard the vessel . . . there was little or no evidence that one of the defendants was comparatively less culpable than the others"). Id. at 572. See also United States v. Coneo-Guerrero, 148

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F.3d 44 (1<sup>st</sup> Cir. 1998) (no evidence of minor role where all defendants were aboard a boat transporting cocaine from Colombia to Puerto Rico

11.

**CONCLUSION**

WHEREFORE, for all of the foregoing reasons, the United States respectfully requests that this Court

In San Juan, Puerto Rico, this 20<sup>th</sup> day of October, 2004.

H.S. GARCIA  
UNITED STATES ATTORNEY

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel for defendant

By: s/ Judith Vargas  
Judith Vargas, USDC No. 219914